

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

**DEANDRE HARRIS,**

*Plaintiff,*

**v.**

**JASON KESSLER, et. al,**

*Defendants.*

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**Civil Action No. 3:19-cv-00046**

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**PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

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**ATTORNEYS FOR PLAINTIFF**

## **I. INTRODUCTION**

Pursuant to Federal Rule of Civil Procedure 15(a), Local Rule 11(c)(2), and this Court's January 12, 2021 hearing with counsel for Plaintiff and defense counsel, Plaintiff DeAndre Harris hereby respectfully submits this Motion for Leave to File Amended Complaint.

## **II. PROCEDURAL POSTURE**

Plaintiff filed suit on August 12, 2019 against defendant organizations and individuals asserting various causes of action for conspiracy to violate his civil rights when white supremacists united and marched in the Unite the Right rallies that took place in Charlottesville, Virginia on August 11 and August 12 of 2017. On November 30, 2020, the Court granted the motion to dismiss filed by defendants Michael Tubbs, Michael Hill, and League of the South. On December 3, 2020, the Court denied the motion to dismiss filed by defendant Jeff Schoep and ordered that Jeff Schoep, Matthew Parrott and the Traditionalist Workers Party re-file their motions to dismiss. Plaintiff subsequently filed its response in opposition to each of these motions to dismiss.

On January 12, 2021, the Court held a telephonic hearing with counsel for Plaintiff and defense counsel regarding plans to move forward with litigation. Counsel for Plaintiff indicated during the hearing that it would file its responses to the pending motions to dismiss and also be seeking leave from the Court to file an amended complaint.

## **III. ARGUMENT**

Federal Rule of Civil Procedure 15(a) states that a Court will freely grant leave to file an amended complaint when the interests of justice so require. Specifically, the Supreme Court has

opined that, “Rule 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is to be heeded... In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962). In the present case, the efficient administration of justice requires that Plaintiff be given leave to file an amended complaint. Plaintiff has obtained additional counsel to assist in litigating the present matter and drafting an amended complaint to include more factual detail regarding each defendant’s participation and role in the injuries suffered by Plaintiff. This more detailed description will narrow the scope of the issues presented and allow for efficient discovery to be undertaken.

Furthermore, Defendants will not suffer substantial prejudice and there is no other reason Plaintiff should not be given leave to amend its Complaint. No prejudice exists here as the Court has not yet entered a Scheduling Order in this matter and the parties have not yet begun the discovery process, although Plaintiff will begin producing its discovery requests to Defendants shortly. Defendants have not yet had to answer interrogatories, requests for production or be deposed and would thus not be substantially prejudiced if Plaintiff is granted leave to file an amended complaint.

Plaintiff is not seeking leave to amend for purposes of undue delay. During the January 12 hearing with the Court, counsel for Plaintiff communicated its intent to proceed with requesting leave to file an amended complaint and that it would also be issuing discovery requests to various defendants. Plaintiff has obtained additional counsel to assist with litigation and wants to ensure he may continue litigating the present matter. Additionally, this would be

Plaintiff's first amended complaint as no prior amendments have been filed by the Plaintiff. If Plaintiff is given leave to make its amendment it will cure any deficiencies identified by the Court. Counsel for Plaintiff indicated during the January 12 hearing that recent actions by the various Defendant organizations and individuals provide even further basis to support additional facts and context to be made in an amended complaint.

Plaintiff is not seeking leave to amend in bad faith or through dilatory motive. Counsel for Plaintiff indicated to the Court that it would be seeking leave to amend and that it still intended to pursue discovery and continued litigation once it could file Plaintiff's Amended Complaint. The purpose of filing this Amended Complaint is to elaborate on the roles of each Defendant in contributing and causing the damages suffered by the Plaintiff.

### **CONCLUSION**

For the above reasons, Plaintiff's Motion for Leave to File Amended Complaint should be granted.

Respectfully Submitted,

/s/ S. Lee Merritt

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2021, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send notices of electronic filing to Defendants.

Respectfully Submitted,

/s/ S. Lee Merritt

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